UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
Cr. No. 10-32(2)(JNE/SER)

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	**DEFENDANT'S RESPONSE TO**
	)	**GOVERNMENT'S POSITION ON**
v.	)	**RESTITUTION**
	)	
STEVEN J. LEACH,	)	
	)	
Defendant.	)	

INTRODUCTION

The defendant, Steven Leach, by and through his undersigned counsel, hereby submits this response to the government's position regarding the forfeiture of certain assets of Mr. Leach, which were frozen by court order by agreement of the parties pending sentencing. The defendant agrees that the revocable trust in Steven Leach's name at U.S. Bank, account number ending in 0333, should be forfeited to be applied towards any restitution order the court issues in this case. The defendant objects to his IRA at Merrill Lynch, account number ending in 8030, being forfeited at this time for the reasons stated below.

ARGUMENT

The funds in Mr. Leach's IRA were rolled over from various 401K plans he had at companies he owned and companies where he worked. These plans were ERISA-qualified plans, and, as such, contained anti-alienation provisions which by their explicit terms, prohibit the attachment of said funds in collection proceedings to enforce a debt. Furthermore upon information and belief, defendant's IRA is considered a qualified trust under the tax code, 26 U.S.C. § 401(a)(13)(A), and therefore contains an anti-alienation provision. The ERISA-based limitation on alienability, thus, limits this court's ability to forfeit Mr. Leach's IRA. The Supreme Court held in accord in *Guidry v. Sheet Metal Workers National Pension Fund, et al.*, 493 U.S. 365 (1990). In *Guidry*, the Court held that the remedial provision of the Labor-Management Reporting and Disclosure Act did not override the anti-alienation provision of ERISA. The Eighth Circuit has not decided this issue. Thus, summary disposition of the IRA may well run afoul of our Supreme Court's holding in *Guidry* and a full hearing on the terms of the IRA and its ultimate forfeitability is warranted.

Furthermore, Minnesota law may provide a limitation to the amount of the IRA that is subject to forfeiture. As this court is aware, orders under the MVRA are enforceable in accordance with "the practices and procedures for the enforcement of a civil judgment under Federal law or State law." 18 U.S.C. 3613(a). Minnesota state law, however, provides a limited exemption for IRA funds from creditors. *See*, Minn. Stat. §550.37(24). That limitation by its terms requires this court to consider the extent reasonably necessary for the support of the debtor and any spouse or dependent. Id. Summary disposition of the IRA is thus inappropriate.

Finally, in determining the manner in which restitution is to be paid under the MVRA, the Court must consider the financial resources and other assets of the defendant, projected earnings of the defendant and any financial obligations of the defendant. 18 U.S.C. §3664(f)(2)(A)-(C). There is also an issue regarding the penalties and taxes owed if the IRA is liquidated to pay restitution. In other words, should the penalties and taxes owed from liquidating the IRA be subtracted from the amount paid out of the IRA to Chrysler Financial for restitution?

Considering all of the above issues, the summary forfeiture of defendant's IRA at sentencing would be inappropriate. The issue of whether defendant's IRA should be forfeited should be determined at a later date, after the government has obtained a judgment on the restitution order and has started collection proceedings.

CONCLUSION

The defendant respectfully requests the Court to order at the sentencing hearing that defendant's revocable trust be forfeited to pay towards the Court's restitution order, but to reserve ruling on the forfeiture of Mr. Leach's IRA until such a time as the matter can be heard by the court in full.

Dated: February 1, 2011

Respectfully submitted,

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